

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Public Notice on Interpretation of the Terms)	MB Docket No. 12-83
“Multichannel Video Programming)	
Distributor” and “Channel” as Raised in)	
Pending Program Access Complaint)	
Proceeding)	

REPLY COMMENTS OF CENTURYLINK

CenturyLink submits these comments in response to the Public Notice in the above-captioned proceeding.¹ In relation to a program access complaint pending before the Federal Communications Commission Media Bureau (Bureau), the Bureau seeks public comment on interpreting the definition of “multichannel video programming distributor” (MVPD) and “channel” as used in the definition of MVPD.

As the Bureau recognizes, interpreting the definition of the term “multichannel video programming distributor” has far-reaching legal and policy implications that go well beyond the limited proceeding in which this issue has been raised and these comments are being filed. As such, CenturyLink views that the Commission would better serve the video industry by addressing this important definitional issue in a rulemaking proceeding. Any decision by the Bureau here should be limited to the parties to the complaint. If the Commission intends to more broadly address the definitional issues raised in the Public Notice, the Commission should open a rulemaking proceeding so as to afford an opportunity for full discourse on these issues prior to its rendering a decision that can guide the video industry on these issues.

¹ Public Notice, DA 12-507, rel. Mar. 30, 2012. Public Notice extending comment cycle, DA 12-634, rel. Apr. 24, 2012.

It is apparent from the opening comments filed in this matter that there is not agreement whether an over-the-top video provider such as Sky Angel should be considered an MVPD with all the protections and obligations that that distinction provides. The definitions of MVPD and channel raised by the Bureau in the Public Notice are issues that it would be prudent for the Commission to address in a rulemaking proceeding that enables more open discussion and opportunity for a full range of industry participants to weigh in. Comments in this proceeding have identified a variety of issues and intersecting legal and policy frameworks that should be carefully considered and fully evaluated to enable a well-reasoned Commission interpretation of MVPD in today's video marketplace. For instance, in addition to the appropriate interpretations within the confines of the Title VI video provisions and the FCC's implementing regulations, parties have commented on the intertwined nature of these issues with provisions of the Copyright Act, accessibility rules, and the First Amendment.² The Commission should consider the interplay of these and other legal obligations prior to any determination or broad application of its interpretation of MVPD with respect to over-the-top providers.

Further, not all over-the-top video providers offer the same video services or offer them in the same manner. Using only the facts of the video service that Sky Angel provides to make determinations regarding the definition of MVPD to over-the-top video providers in general would be unwise. The Commission needs a more robust record on over-the-top video providers, the video services they offer and the manners in which they offer them as well as how those services and delivery mechanisms compare to recognized MVPDs, before it determines how over-the-top video providers may or may not fall within the definition of MVPD.

² See, e.g., Comments of the National Association of Broadcasters at 2; Comments of the Motion Picture Association of America, Inc., *generally*; Comments of Cablevision System Corporation at 17-19; Comments of Telecommunications for the Deaf and Hard of Hearing, Inc., *et al.*, *generally*.

Thus, CenturyLink agrees with those who have advocated that any Bureau decision on the Sky Angel complaint should be narrow,³ and that the Commission should conduct a rulemaking proceeding if it intends to address the definition of MVPD with respect to over-the-top video providers more generally.⁴

Respectfully submitted,

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³ *E.g.*, Comments of AT&T at 3.

⁴ *E.g.*, Comments of Computers & Communications Industry Association at 5; Comments of AT&T at 3.